



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

Hon. R. S. Wyche  
County Auditor  
Gregg County  
Longview, Texas

Dear Sir:

Opinion No. 0-1628

Re: (1) In a "salary" county out of what fund  
should the salary of the county treasurer  
be paid?  
(2) The method of issuance of the salary  
warrant to the county treasurer.

Your letter of recent date, relating to the above  
matters, has been received.

Your letter, in part, reads as follows:

"The Commissioners' Court set the County  
Treasurer's compensation in the Officers' Salary  
Fund at \$225.00 per month. A question has arisen  
as to whether or not the compensation for the  
County Treasurer should be set up on a percent-  
age basis for each of the funds, or whether it  
should be set up in the budget against a single  
fund. There are several court decisions that  
hold that the County Treasurer's compensation  
is not a salary but that he received a certain  
compensation based upon disbursements and re-  
ceipts. Our valuation according to the last tax  
roll was slightly in excess of One-hundred and  
six million, and our population according to the  
last Federal census is 15,778.

"Please inform me how the compensation of  
the Treasurer should be set up and how he should  
be paid. Does he have authority to draw his own  
pay from whatever fund he may desire, or does

the County Clerk issue him a warrant as other officers are paid?"

We note from your communication that the compensation of the county officers of Gregg County has been provided for on a salary basis, presumably in accordance with Section 15 of Article 3912e, Vernon's Annotated Civil Statutes of Texas.

Section 3 of Article 3912e, supra, reads as follows:

"In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

Under this statute, neither the state of Texas nor any county shall be charged with or pay to any of the officers so compensated on a salary basis, any fee or commission for the performance of any or all of the duties

of their offices, save only the tax assessor and collector who shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds provided for in the Act, all fees and commissions which he is authorized under the law to collect. The only fees, commissions and costs which the officers of the county, save only the tax assessor and collector, are authorized by law to collect, are those fees, commissions and costs that private parties are required to pay under the law, and costs in civil cases by the state.

Accordingly, the commissions which the county treasurer would be authorized, otherwise, to receive on monies of the county received and disbursed by him, under Articles 3941-3943 inclusive, Revised Statutes of Texas, may no longer be collected against the county. To allow such collections would do violence to Section 3 of Article 3912e, supra, in that the county would thereby be charged with and pay such commissions for the performance by the county treasurer of his official duties.

This matter was exhaustively discussed by this department in opinion No. 0-807, addressed to Mr. L. P. Heard, County Auditor, Bell County, Belton, Texas. We are enclosing, herewith, a copy of this opinion for your further information.

You are, therefore, respectfully advised that it is the opinion of this department that the compensation of the county treasurer, placed by order of the Commissioners' Court on a salary basis under Article 3912e, supra, should be paid out of the Officers' Salary Fund in accordance with Section 4 thereof, which reads:

"In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census wherein the county or precinct officers are compensated on a salary basis under the provisions of this Act, there shall be created a fund to be known as the 'Officers' Salary Fund of \_\_\_\_\_ County, Texas.' Such fund shall be kept separate and apart from all other county funds, and shall be held and disbursed for the purpose of paying the

Hon. R.S. Wyche, page 4

salaries of officers and the salaries of deputies, assistants and clerks of officers who are drawing a salary from said fund under the provisions of this Act, and to pay the authorized expenses of their offices. Such fund shall be deposited in the county depository and shall be protected to the same extent as other county funds."

In answer to your second question, it is the opinion of this department that the salary warrant of the county treasurer should be issued in the same manner as the salary warrants of the other officers of the county, as set out in Section 7 of Article 3912e, supra, which provides:

"All monies drawn from said Officers' Salary Fund or funds shall be paid out only on warrants approved by the county auditor in counties having a county auditor; otherwise all claims against said fund shall first have been audited and approved by the Commissioners' Court of said county and the monies shall be disbursed on such approved claims by warrants drawn by the county treasurer on said fund.

" \* \* \* "

We trust this answers your inquiries satisfactorily, and we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED NOV 15, 1939

(s)

Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

By

Wm. J. Fanning  
Assistant

By

Zollie C. Steakley

ZCS:ob  
Encl.

APPROVED  
opinion committee  
By BWB  
chairman